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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180517486-8999-02]

RIN 0648-XG263

Atlantic Highly Migratory Species; 2019 Atlantic Shark Commercial Fishing Year

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule establishes the 2019 opening date for all Atlantic shark fisheries, including the fisheries in the Gulf of Mexico and Caribbean. This final rule also establishes the quotas for the 2019 fishing year based on harvest levels during 2018, and the large coastal shark (LCS) retention limits for directed shark limited access permit holders. NMFS may increase or decrease these retention limits for directed shark limited access permit holders during the year, in accordance with existing regulations, to provide, to the extent practicable, equitable fishing opportunities for commercial shark fishermen in all regions and areas. These actions could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: This rule is effective on January 1, 2019. The 2019 Atlantic commercial shark fishing year opening dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Atlantic Highly Migratory Species (HMS) Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford, Chanté Davis, or Karyl Brewster-Geisz at 301-427-8503.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial shark retention limits, commercial quotas for species and management groups, and accounting measures for under- and overharvests for the shark fisheries. The FMP also established adaptive management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

On September 11, 2018 (83 FR 45866), NMFS published a proposed rule that proposed opening all Atlantic commercial shark management groups on January 1, 2019. NMFS proposed to start the 2019 commercial shark fishing year in the eastern and western Gulf of Mexico sub-regions with a retention limit of 36 LCS other than sandbar sharks per vessel per trip. In the Atlantic region, NMFS proposed to start the fishing year with a retention limit of 25 LCS other

than sandbar sharks per vessel per trip and adjust the commercial shark retention limit between zero and 55 LCS other than sandbar sharks per vessel per trip to ensure equitable access to the fishery throughout the year. In addition, NMFS proposed quota adjustments to account for underharvest of the Gulf of Mexico blacktip shark management group, Gulf of Mexico smoothhound shark management group, and Atlantic smoothhound shark management group quotas. The proposed rule contains details about the action that are not repeated here. The comment period on the proposed rule closed on October 11, 2018.

NMFS received eight written and oral comments regarding the proposed opening dates, retention limits, and potential inseason retention limit adjustments as it applied to LCS in the Gulf of Mexico and Atlantic regions. Those comments, along with the Agency's responses, are summarized below. After considering all the comments, NMFS is opening the fishing year for all shark management groups on January 1, 2019, as proposed. NMFS is changing the retention limit for directed shark limited access permit holders in the blacktip, aggregated LCS, and hammerhead management groups for the entire Gulf of Mexico region to 45 LCS other than sandbar sharks per vessel per trip in this final rule. The proposed rule would have set the retention limit at 36 LCS other than sandbar sharks per vessel per trip. The aggregated LCS and hammerhead shark management groups in the Atlantic region will start the fishing year with a retention limit of 25 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders, as proposed. The retention limit for incidental shark limited access permit holders for all regions has not changed from the proposed rule and remains at 3 LCS other than sandbar sharks per trip and a combined total of 16 small coastal sharks (SCS) and pelagic sharks, combined per trip consistent with § 635.24(a)(3) and (4). Additionally, the retention limit for

blacknose sharks for all permit holders in the Atlantic region south of 34⁰⁰' N.lat. has not changed from the proposed rule and remains at an eight blacknose sharks per trip consistent with § 635.24 (a)(4).

This final rule serves as notification of the 2019 opening date for the Atlantic commercial shark fisheries and 2019 retention limits and quotas, based on shark landings data updated as of October 15, 2018 and criteria set in existing regulations at 50 CFR, Part 635. In setting the opening date, NMFS considered the “opening commercial fishing season” criteria at § 635.27(b)(3). This criteria includes the following factors: available annual quotas for the current fishing season; estimated season length and average weekly catch rates from previous years; length of the season and fishermen participation in past years; impacts to accomplishing objectives of the 2006 Consolidated HMS FMP and its amendments; temporal variation in behavior or biology of target species (*e.g.*, seasonal distribution or abundance); impact of catch rates in one region on another; and effects of delayed season openings.

While this action adjusts certain quotas as allowable, this action does not establish or change the annual baseline commercial quotas established under the 2006 Consolidated HMS FMP and its amendments for any shark management group. The baseline quotas were established under previous actions, and any changes to those baseline quotas would be performed through a separate action. Rather, this action adjusts the annual commercial quotas for 2019 based on over- and/or underharvests that occurred in 2018, consistent with existing regulations, and establishes the opening dates for the fisheries. Based on updated landings information as of October 15, 2018, only the adjusted blacktip quota in the Gulf of Mexico region has changed from the proposed rule. All other quotas remain the same as proposed.

Response to Comments

NMFS received eight written and oral comments on the proposed rule from fishermen, dealers, and other interested parties. All written comments can be found at <http://www.regulations.gov/> by searching for RIN 0648-XG263. All of the comments received are summarized below.

Comment 1: NMFS received several comments regarding the proposed decrease in the commercial retention limit for the aggregated LCS, hammerhead, and blacktip management groups in the eastern and western Gulf of Mexico sub-regions. Of those comments, all were opposed to the proposed retention limit of 36 aggregated LCS other than sandbar sharks per vessel per trip, and noted that NMFS should maintain the retention limit at 45 aggregated LCS other than sandbar sharks per vessel per trip. The State of Louisiana along with commercial fishermen from the western Gulf of Mexico sub-region noted that they preferred keeping the retention limit at the default limit of 45 sharks per vessel per trip. Commenters prefer to maximize shark landings per trip, regardless of the length or timing of the season. NMFS also received comments from commercial fishermen in the eastern Gulf of Mexico sub-region that stated they also preferred a retention limit of 45 aggregated LCS per vessel per trip. Specifically, the fishermen in the eastern Gulf of Mexico sub-region noted that because of the consistent regulations over the past few years, the market for shark meat has expanded in their area. NMFS did not receive any comments in support of the reduction.

Response: After considering these comments, NMFS has determined that the default retention limit of 45 LCS other than sandbar sharks per vessel per trip is appropriate and will

ensure equitable fishing opportunities in both Gulf of Mexico sub-regions, to the extent practicable. NMFS originally proposed a lower retention limit in the western Gulf of Mexico sub-region with the goal of preserving quota for the fishery through April 1, which is when the State of Louisiana closes shark fishing in state waters. However, comments from the western Gulf of Mexico sub-region, including comments from the State of Louisiana, did not support the lower proposed retention and preferred a higher retention limit per trip. The State of Louisiana has a default limit of 45 LCS including blacktips and hammerheads per trip per vessel per day and prefers that the federal limit match the state limit. Regarding the eastern Gulf of Mexico sub-region, NMFS proposed the lower retention limit to reduce any confusion caused by having two separate retention limits in the Gulf of Mexico region. Given public comment from both sub-regions, and supporting information from eastern Gulf of Mexico fishermen regarding the expanding market for shark meat, NMFS will also maintain the default retention limit in the eastern Gulf of Mexico sub-region.

Comment 2: Several commenters supported the proposed opening date of January 1, 2019 for the Gulf of Mexico region.

Response: Given the support for this opening date, NMFS will open the Gulf of Mexico blacktip, aggregated LCS, and hammerhead shark management groups on January 1, 2019, as proposed. NMFS will also open all the other shark management groups, including those in the Atlantic region, on January 1, 2019, as proposed.

Comment 3: One commenter expressed concern about adequate enforcement of the quotas and retention limits, noting that they feel shark populations are being decimated, and requested a closure of all shark fisheries.

Response: NMFS is responsible for managing quotas for the Atlantic shark fisheries consistent with the Magnuson-Stevens Act and other applicable laws. Based on various stock assessments and best available science, NMFS established baseline quotas for various Atlantic shark management groups in the 2006 Consolidated HMS FMP and its amendments. These baseline quotas were established to prevent overfishing and ensure overfished stocks would rebuild within a specified timeframe. NMFS adjusts these baseline quotas, as needed, on an annual basis as a result of over- or underharvests in previous years. When establishing the shark commercial baseline quota, NMFS uses the total allowable catch calculated during the stock assessment then subtracts all other sources of mortality, including recreational landings, commercial discards, post-release mortality, and research set-aside mortality. NMFS also takes into account the effects of fishing on essential fish habitat, protected resources, and the environment to fulfill requirements for the associated FMP amendment along with socioeconomic value of these shark species to various groups. The quota is then monitored using dealer reports on a weekly basis throughout the year. NMFS closes the commercial fishery for any shark management group if the landings have reached, or are projected to reach, 80 percent of the available overall, regional, and/or sub-regional quota if the fishery's landings are not projected to reach 100 percent of the applicable quota before the end of the season, or when the quota-linked management group is closed. Once the quota is reached, these fishery closures prevent overfishing of the relevant stock(s). Since these quotas are based on the best scientific information available, NMFS is confident that allowing commercial shark fishing in 2019 will not cause shark populations to be decimated.

Regarding the comment about adequate enforcement, NMFS takes enforcement of these regulations seriously. If suspected illegal activities are observed in any fishery and/or region, specific information regarding such incidents can be reported to NOAA Office of Law Enforcement through the national enforcement hotline at 1-800-853-1964. All commercial shark landings and quotas are monitored with the HMS electronic dealer reporting system, which has been in use since 2013. This system monitors data on a weekly basis, and provides information on each dealer transaction, including all shark landings to the species level, and ensures that quotas are not exceeded. In addition, NMFS can verify and detect falsified reporting by dealers and fishermen by cross-checking dealer reports to fishermen's logbooks.

Comment 4: NMFS received comments regarding the Gulf of Mexico blacktip shark stock. Specifically, commenters asked for a new Gulf of Mexico blacktip shark stock assessment and an increase in the blacktip shark quota. Commenters also requested that NMFS combine the Gulf of Mexico blacktip shark management group with the aggregated LCS management group.

Response: These comments are outside the scope of this rulemaking. The purpose of this rulemaking is to adjust quotas for the 2019 shark year based on over- and underharvests from the previous years and set opening dates and initial retention limits for the 2019 shark year. Issues regarding new baseline quotas, new management units, and the timing of stock assessments are not addressed by this rulemaking. NMFS did complete an update to the Gulf of Mexico blacktip stock assessment in October 2018 (<http://sedarweb.org/sedar-29u>), and is reviewing the results to determine if any changes, such as modifying the various management units or changes to the quotas, are needed. Additionally, NMFS will be assessing the Atlantic blacktip stock via the

SouthEast Data, Assessment, and Review process in 2019, and will consider appropriate management measures for that stock once the assessment is complete.

Comment 5: NMFS received a comment requesting the division between eastern and western Gulf of Mexico sub-regions be moved from 88 to 89 degrees west longitude.

Response: This comment is outside the scope of this rulemaking because the purpose of this rulemaking is to adjust quotas for the 2019 shark year based on over- and underharvests from the previous years and set opening dates and initial retention limits for the 2019 shark year. In Amendment 6 to the 2006 Consolidated HMS FMP, NMFS analyzed, among other things, the impacts and justification for a regional management boundary to apportion the Gulf of Mexico regional commercial quotas for aggregated LCS, and blacktip shark management groups. Based on public comments and additional analyses, and after consulting with the HMS Advisory Panel, NMFS established a division of the Gulf of Mexico at 88° 00' W. longitude. The issue of subdividing the Gulf of Mexico regional quota is not being re-addressed in this rulemaking.

Changes from the Proposed Rule

As described above, and as a result of public comment and additional analyses, NMFS made changes from the proposed rule. Specifically, NMFS changed the retention limit for directed shark limited access permit holders at the start of the commercial shark fishing year for the blacktip, aggregated LCS, and hammerhead shark management groups in the eastern and western Gulf of Mexico sub-regions from 36 LCS other than sandbar sharks per vessel per trip to 45 LCS other than sandbar sharks per vessel per trip. NMFS changed the retention limit after considering public comment and the 2018 landings data. NMFS noted in the proposed rule that retention limits might change in response to public comment. The default retention limit is

within the allowable range and consistent with the limits established in recent years. NMFS expects that a retention limit of 45 LCS other than sandbar sharks per vessel per trip will provide equitable fishing opportunities throughout the sub regions, to the extent practicable, and retains its discretion to make inseason adjustments to retention limits, in accordance with existing regulations and in furtherance of the goals and objectives of the 2006 Consolidated HMS FMP and its amendments.

Additionally, based on updated landings information, NMFS changed the final blacktip shark quota in both Gulf of Mexico sub-regions. As NMFS explained in the proposed rule (83 FR 45866; Sept 11, 2018), shark management group quotas in this final rule are based on dealer reports received as of mid-October. Specifically, the final adjustments are based on updated landings through October 15, 2018. Updated landing reports indicate an additional 11.5 metric tons (mt) of blacktip shark was landed in the Gulf of Mexico in 2018. Accordingly, the regional underharvest for the Gulf of Mexico region is now only 26.9 mt dressed weight (dw) (59,355 pounds (lb) dw). Since more blacktip sharks were landed, the final adjustment is lower than the proposed adjustment of 38.4 mt dw (84,702 lb dw).

Therefore, the sub-regional quota adjustments are also lower than the adjustments in the proposed rule. The underharvest is divided between the two sub-regions, based on the percentages that are allocated to each sub-region, which are set forth at § 635.27(b)(1)(ii)(C). The western Gulf of Mexico sub-regional baseline quota is being increased by 24.3 mt dw (53,538 lb dw), which is a reduction of 10.3 mt dw from the proposed rule. Similarly, the eastern Gulf of Mexico sub-regional baseline quota is being increased by 2.6 mt dw (5,817 lb dw), which is a reduction of 1.1 mt dw from the proposed rule.

2019 Annual Quotas

This final rule adjusts the 2019 commercial quotas due to overharvests and/or underharvests in 2018 and previous fishing years, based on landings data through October 15, 2018. The 2018 annual quotas by species and management group are summarized in Table 1. Any dealer reports that are received by NMFS after October 15, 2018 will be used to adjust the 2020 quotas, if necessary. A description of the quota calculations is provided in the proposed rule and is not repeated here. Any changes are described in the “Changes from the Proposed Rule” section.

Table 1. 2019 Final Adjusted Quotas for the Atlantic Shark Fisheries. (All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. 1 mt dw = 2,204.6 lb dw.)

Region or Sub-region	Management Group	2018 Adjusted Quota (A)	Preliminary 2018 Landings ¹ (B)	Adjustments ² (C)	2019 Baseline Quota (D)	2019 Final Adjusted Quota (D+C)
Western Gulf of Mexico	Blacktip Sharks	347.2 mt dw (765,392 lb dw)	330.4 mt dw (728,314 lb dw)	24.3 mt dw (53,538 lb dw) ³	231.5 mt dw (510,261 lb dw)	255.8 mt dw (563,799 lb dw)
	Aggregated Large Coastal Sharks	72.0 mt dw (158,724 lb dw)	92.4 mt dw (203,656 lb dw)	-	72.0 mt dw (158,724 lb dw)	72.0 mt dw (158,724 lb dw)
	Hammerhead Sharks	11.9 mt dw (26,301 lb dw)	11.0 mt dw (24,292 lb dw)	-	11.9 mt dw (26,301 lb dw)	11.9 mt dw (26,301 lb dw)
Eastern Gulf of Mexico	Blacktip Sharks	37.7mt dw (83,158 lb dw)	27.6 mt dw (60,881 lb dw)	2.6 mt dw (5,817 lb dw) ³	25.1 mt dw (55,439 lb dw)	27.7 mt dw (61,256 lb dw)
	Aggregated Large Coastal Sharks	85.5 mt dw (188,593 lb dw)	49.7 mt dw (109,653 lb dw)	-	85.5 mt dw (188,593 lb dw)	85.5 mt dw (188,593 lb dw)
	Hammerhead Sharks	13.4 mt dw (29,421 lb dw)	8.4 mt dw (18,555 lb dw)	-	13.4 mt dw (29,421 lb dw)	13.4 mt dw (29,421 lb dw)

Region or Sub-region	Management Group	2018 Adjusted Quota (A)	Preliminary 2018 Landings ¹ (B)	Adjustments ² (C)	2019 Baseline Quota (D)	2019 Final Adjusted Quota (D+C)
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	112.6 mt dw (248,215 lb dw)	54.0 mt dw (118,968 lb dw)	-	112.6 mt dw (248,215 lb dw)	112.6 mt dw (248,215 lb dw)
	Smoothhound Sharks	504.6 mt dw (1,112,441 lb dw)	0 mt dw (0 lb dw)	168.2 mt dw (370,814 lb dw)	336.4 mt dw (741,627)	504.6 mt dw (1,112,441 lb dw)
Atlantic	Aggregated Large Coastal Sharks	168.9 mt dw (372,552 lb dw)	65.2 mt dw (143,809 lb dw)	-	168.9 mt dw (372,552 lb dw)	168.9 mt dw (372,552 lb dw)
	Hammerhead Sharks	27.1 mt dw (59,736 lb dw)	8.3 mt dw (18,328 lb dw)	-	27.1 mt dw (59,736 lb dw)	27.1 mt dw (59,736 lb dw)
	Non-Blacknose Small Coastal Sharks	264.1 mt dw (582,333 lb dw)	82.2 mt dw (181,149 lb dw)	-	264.1 mt dw (582,333 lb dw)	264.1 mt dw (582,333 lb dw)
	Blacknose Sharks (South of 34° N. lat. only)	17.2 mt dw (37,921 lb dw)	4.6 mt dw (10,213 lb dw)	-	17.2 mt dw (37,921 lb dw)	17.2 mt dw (37,921 lb dw)
	Smoothhound Sharks	1,802.6 mt dw (3,973,902 lb dw)	370.4 mt dw (816,572 lb dw)	600.9 mt dw (1,324,634 lb dw)	1,201.7 mt dw (2,649,268 lb dw)	1,802.6 mt dw (3,973,902 lb dw)

Region or Sub-region	Management Group	2018 Adjusted Quota (A)	Preliminary 2018 Landings ¹ (B)	Adjustments ² (C)	2019 Baseline Quota (D)	2019 Final Adjusted Quota (D+C)
No regional quotas	Non-Sandbar LCS Research	50.0 mt dw (110,230 lb dw)	12.3 mt dw (27,123 lb dw)	-	50.0 mt dw (110,230 lb dw)	50.0 mt dw (110,230 lb dw)
	Sandbar Shark Research	90.7 mt dw (199,943 lb dw)	42.8 mt dw (94,123 lb dw)	-	90.7 mt dw (199,943 lb dw)	90.7 mt dw (199,943 lb dw)
	Blue Sharks	273.0 mt dw (601,856 lb dw)	< 13.6 mt dw (< 30,000 lb dw)	-	273.0 mt dw (601,856 lb dw)	273.0 mt dw (601,856 lb dw)
	Porbeagle Sharks	1.7 mt dw (3,748 lb dw)	0 mt dw (0 lb dw)	-	1.7 mt dw (3,748 lb dw)	1.7 mt dw (3,748 lb dw)
	Pelagic Sharks Other Than Porbeagle or Blue	488.0 mt dw (1,075,856 lb dw)	44.7 mt dw (98,521 lb dw)	-	488.0 mt dw (1,075,856 lb dw)	488.0 mt dw (1,075,856 lb dw)

¹ Landings are from January 1, 2018, through October 15, 2018, and are subject to change.

² Underharvest adjustments can only be applied to stocks or management groups that are not overfished and have no overfishing occurring. Also, the underharvest adjustments cannot exceed 50 percent of the baseline quota.

³ This final rule would increase the overall Gulf of Mexico blacktip shark quota due to an overall underharvest of 26.9 mt dw (59,355 lb dw) in 2018. The overall quota would be split based on percentages that are allocated to each sub-region, as explained in the text.

2019 Atlantic Commercial Shark Fishing Year

NMFS considered the seven “opening commercial fishing season” criteria listed in § 635.27(b)(3), as discussed above and as described in the proposed rule (83 FR 45866; September 11, 2018). These include, among other things: the available annual quotas based on any over- and/or underharvests experienced during the previous seasons; the estimated season length based on available quotas and catch rates from previous years; the length of the season in the previous years and whether fishermen were able to participate in the fishery in those years; and the effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas.

Regarding the LCS retention limit, as shown in Table 2, directed shark limited access permit holders fishing on the Gulf of Mexico blacktip shark, aggregated LCS, and hammerhead shark management groups will start the commercial fishing year at 45 LCS other than sandbar sharks per vessel per trip. Directed shark limited access permits fishing on the Atlantic aggregated LCS and hammerhead shark management groups will start the commercial fishing year at 25 LCS other than sandbar sharks per vessel per trip. These retention limits could be changed throughout the year based on consideration of the inseason trip limit adjustment criteria at § 635.24(a)(8).

Specifically, in the Atlantic region, NMFS will closely monitor the quota at the beginning of the year. If it appears that the quota is being harvested too quickly to allow fishermen throughout the entire region the opportunity to fish (*e.g.*, if approximately 20 percent of the quota is caught at the beginning of the year), NMFS will consider reducing the commercial retention limit, potentially to 3 LCS other than sandbar sharks per vessel per trip. Given the geographic

distribution of the sharks at this time of year (i.e., they head north before moving south again later in the year), the retention limit would be adjusted to ensure there is quota available later in the year (see the criteria at § 635.24(a)(8)(i), (ii), (v), and (vi)). Then, based on the prior years' fishing activity, and to allow more consistent fishing opportunities later in the year, NMFS will consider raising the commercial retention around July 15, 2019. The specific increase or decrease in retention limit depends on a review of the inseason trip limit adjustment criteria at § 635.24(a)(8).

All of the shark management groups will remain open until December 31, 2019, or until NMFS determines that the landings for any shark management group have reached, or are projected to reach, 80 percent of the available overall, regional, and/or sub-regional quota, if the fishery's landings are not projected to reach 100 percent of the applicable quota before the end of the season, or when the quota-linked management group is closed. For the blacktip shark management group, regulations at § 635.28(b)(5)(i) through (v) authorize NMFS to close the management group before landings reach, or are expected to reach 80 percent of the available overall, regional, and/or sub-regional quota after considering the following criteria and other relevant factors: Season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/or sub-regional seasonal distribution, abundance, and migratory patterns; effects on accomplishing the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments; amount of remaining shark quotas in the relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. Additionally, NMFS has previously established non-linked and linked quotas; linked quotas are explicitly designed to concurrently close multiple shark management groups that are caught

together to prevent incidental catch mortality from exceeding the total allowable catch. The linked and non-linked quotas are shown in Table 2. If NMFS determines that a shark species or management group must be closed, then NMFS will publish a notice in the **Federal Register** of closure for that shark species, shark management group, region, and/or sub-region that will be effective no fewer than four days from the date of filing (§ 635.28(b)(2) and (3)). From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years.

Table 2. Quota Linkages, Opening Dates, and Commercial Retention Limit by Regional or Sub-Regional Shark Management Group.

Regional Shark Management Group				
Region or Sub-region	Management Group	Quota Linkages	Opening Dates	Commercial Retention Limits for Directed Shark Limited Access Permit Holders (inseason adjustments are available)
Eastern Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2019	45 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Western Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2019	45 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	Not Linked	January 1, 2019	N/A

Atlantic	Aggregated Large Coastal Sharks	Linked	January 1, 2019	25 LCS other than sandbar sharks per vessel per trip If quota is landed quickly, NMFS anticipates considering an inseason reduction , and later considering an inseason increase around July 15, 2019
	Hammerhead Sharks			
	Non-Blacknose Small Coastal Sharks	Linked (South of 34° N. lat. only)	January 1, 2019	N/A
	Blacknose Sharks (South of 34° N. lat. only)			8 Blacknose sharks per vessel per trip (applies to directed and incidental permit holders)
No regional quotas	Non-Sandbar LCS Research	Linked	January 1, 2019	N/A
	Sandbar Shark Research			
	Blue Sharks	Not Linked	January 1, 2019	N/A
	Porbeagle Sharks			
	Pelagic Sharks Other Than Porbeagle or Blue			

Classification

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866 because they contain no implementing regulations.

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

Section 604(a)(1) of the RFA requires an explanation of the purpose of the rulemaking. The purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to establish the 2018 Atlantic commercial shark fishing quotas, retention limits, and fishing seasons. Without this rule, the Atlantic commercial shark fisheries would close on December 31, 2018, and would not reopen until another action was taken. This final rule will be implemented according to the regulations implementing the 2006 Consolidated HMS FMP and its amendments. Thus, NMFS expects few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments. While there may be some direct negative economic impacts associated with the opening dates for fishermen in certain areas, there could also be positive effects for other fishermen in the region. The opening dates were chosen to allow for an equitable distribution of the available quotas among all fishermen across regions and states, to the extent practicable.

Section 604(a)(2) of the RFA requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), provide a summary of NMFS' assessment of such issues, and provide a statement of any changes made as a result of the comments. The IRFA was done as part of the proposed rule for the 2019 Atlantic Commercial Shark Season Specifications. NMFS did not receive any comments specific to the IRFA or on economics more generally.

Section 604(a)(3) of the RFA requires NMFS to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule and provide a detailed statement of any change made to the proposed rule as a result of the comments. NMFS did not receive any comments from the Chief Counsel for Advocacy of the Small Business Administration on the proposed rule.

Section 604(a)(4) of the RFA requires NMFS to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register**, which NMFS did on December 29, 2015 (80 FR 81194, December 29, 2015). In that final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes (80 FR 81194, December 29, 2015). NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing.

As of October 2018, the final rule would apply to the approximately 220 directed commercial shark permit holders, 268 incidental commercial shark permit holders, 163

smoothhound shark permit holders, and 108 commercial shark dealers. Not all permit holders are active in the fishery in any given year. Active directed commercial shark permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 488 directed and incidental commercial shark permit holders, only 24 permit holders landed sharks in the Gulf of Mexico region and only 89 landed sharks in the Atlantic region. Of the 163 smoothhound shark permit holders, only 66 permit holders landed smoothhound sharks in the Atlantic region and one permit holder landed smoothhound sharks in the Gulf of Mexico region. NMFS has determined that the final rule would not likely affect any small governmental jurisdictions.

Section 604(a)(5) of the RFA requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the actions in this final rule would result in additional reporting, recordkeeping, or compliance requirements beyond those already analyzed in the 2006 Consolidated HMS FMP and its amendments.

Section 604(a)(6) of the RFA requires NMFS to describe the steps taken to minimize the economic impact on small entities, consistent with the stated objectives of applicable statutes. Additionally, the RFA (5 U.S.C. 603(c)(1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives that would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the rule on small entities. These categories of alternatives are: 1) establishment of differing compliance or reporting requirements or timetables that take into account the resources

available to small entities; 2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; 3) use of performance rather than design standards; and 4) exemptions from coverage of the rule, or any part thereof, for small entities.

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are small entities. Thus, there are no alternatives discussed that fall under the first, second, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act; therefore, there are no alternatives considered under the third category.

This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures as adjustments, as specified in the 2006 Consolidated HMS FMP and its amendments and the Environmental Assessment (EA) for the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Thus, in this rulemaking, NMFS adjusted the baseline quotas established and analyzed in the 2006 Consolidated HMS FMP and its amendments by subtracting the underharvest or adding the overharvest, as specified and allowable in existing regulations. Under current regulations (§ 635.27(b)(2)), all shark fisheries close on December 31 of each year, or when NMFS determines that the landings for any shark management group has reached, or is projected to reach, 80 percent of the available overall, regional, and/or sub-regional quota if the fishery's landings are not projected to reach 100 percent of the applicable quota before the end of the season, or when

the quota-linked management group is closed. The fisheries do not open until NMFS takes action, such as this rulemaking, to re-open the fisheries. Thus, not implementing these management measures would negatively affect shark fishermen and related small entities, such as dealers, and also would not provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

Based on the 2017 ex-vessel meat and fin prices (Table 3), fully harvesting the unadjusted 2019 Atlantic shark commercial baseline quotas could result in total fleet revenues of \$7,650,107. For the Gulf of Mexico blacktip shark management group, NMFS will increase the baseline sub-regional quotas due to the underharvests in 2018. The increase for the western Gulf of Mexico blacktip shark management group would result in a \$43,249 gain in total revenues for fishermen in that sub-region, while the increase for the eastern Gulf of Mexico blacktip shark management group would result in a \$5,339 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS will increase the baseline quotas due to the underharvest in 2018. This would cause a potential gain in revenue of \$281,329 for the fleet in the Gulf of Mexico region and a potential gain in revenue of \$1,004,973 for the fleet in the Atlantic region.

All of these changes in gross revenues are similar to the changes in gross revenues analyzed in the 2006 Consolidated HMS FMP and its amendments. The FRFAs for those amendments concluded that the economic impacts on these small entities are expected to be minimal. In the 2006 Consolidated HMS FMP and its amendments and the EA for the 2011 shark quota specifications rule, NMFS stated it would be conducting annual rulemakings and

considering the potential economic impacts of adjusting the quotas for under- and overharvests at that time.

Table 3. Average ex-Vessel Prices per lb dw for Each Shark Management Group, 2017.

Region	Species	Average Ex-Vessel Meat Price	Average Ex-Vessel Fin Price
Western Gulf of Mexico	Blacktip Shark	\$0.51	\$11.03
	Aggregated LCS	\$0.51	\$12.51
	Hammerhead Shark	\$0.67	\$11.67
Eastern Gulf of Mexico	Blacktip Shark	\$0.62	\$8.22
	Aggregated LCS	\$0.43	\$13.00
	Hammerhead Shark	-	\$12.80
Gulf of Mexico	Non-Blacknose SCS	\$0.41	\$8.37
	Smoothhound Shark*	-	-
Atlantic	Aggregated LCS	\$0.95	\$11.47
	Hammerhead Shark	\$0.41	\$13.91
	Non-Blacknose SCS	\$0.96	\$7.33
	Blacknose Shark	\$1.05	-
	Smoothhound Shark	\$0.70	\$1.63
No Region	Shark Research Fishery (Aggregated LCS)	\$0.80	\$12.40
	Shark Research Fishery (Sandbar only)	\$0.50	\$12.40
	Blue shark	\$1.40	\$11.44
	Porbeagle shark	\$1.54	\$2.82
	Other Pelagic sharks	\$1.51	\$2.82

* Used Atlantic smoothhound ex-vessel prices for Gulf of Mexico smoothhound ex-vessel prices since there are currently no landings of Gulf of Mexico smoothhound sharks.

For this final rule, NMFS reviewed the “opening commercial fishing season” criteria at § 635.27(b)(3)(i) through (vii) to determine when opening each fishery will provide equitable opportunities for fishermen, to the extent practicable, while also considering the ecological needs of the different species. The 2018 fishing year and previous years’ over- and/or underharvests were examined for the different species/complexes to determine the effects of the 2019 final quotas on fishermen across regional fishing areas. NMFS examined season lengths and previous

catch rates to ensure equitable fishing opportunities for fishermen. Lastly, NMFS examined the seasonal variation of the different species/complexes and the effects on fishing opportunities. In addition to these criteria, NMFS also considered updated landings data and public comment on the proposed rule before arriving at the final opening dates for the 2019 Atlantic shark management groups. For the 2019 fishing year, NMFS is opening the shark management groups on January 1, 2019. The direct and indirect economic impacts will be neutral on a short- and long-term basis for the Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, Gulf of Mexico hammerhead shark, Gulf of Mexico non-blacknose shark SCS, Atlantic non-blacknose shark SCS, Atlantic blacknose shark, sandbar shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, because NMFS did not change the opening dates of these fisheries from the status quo of January 1.

Opening the aggregated LCS and hammerhead shark management groups in the Atlantic region on January 1 will result in short-term, direct, moderate, beneficial economic impacts, as fishermen and dealers in the southern portion of the Atlantic region will be able to fish for and sell aggregated LCS and hammerhead sharks starting in January. The opening date and retention limits finalized in this rule for the Atlantic region are the same as those for the current year and similar to those for the 2016, 2017, and 2018 years.

Based on past public comments, some Atlantic fishermen in the southern and northern parts of the region prefer a January 1 opening for the fishery as long as the majority of the quota is available later in the year. Along with the inseason retention limit adjustment criteria in § 635.24(a)(8), NMFS monitors the quota through the HMS electronic reporting system on a real-time basis. This allows NMFS the flexibility to further provide equitable fishing opportunities

for fishermen across all regions, to the extent practicable. The direct impacts to shark fishermen in the Atlantic region of reducing the retention limit depend on the needed reduction in the retention limit and the timing of such a reduction. Therefore, such a reduction in the retention limit for directed shark limited access permit holders is only anticipated to have minor adverse direct economic impacts to fishermen in the short-term; long-term impacts are not anticipated as these reductions would not be permanent.

In the northern portion of the Atlantic region, a January 1 opening for the aggregated LCS and hammerhead shark management groups, with inseason trip limit adjustments to ensure quota is available later in the season, will have direct, minor, beneficial economic impacts in the short-term for fishermen as they will potentially have access to the aggregated LCS and hammerhead shark quotas earlier than in past seasons. Fishermen in this area have stated that, depending on the weather, some aggregated LCS species might be available to retain in January. Thus, fishermen will be able to target or retain aggregated LCS while targeting non-blacknose SCS. There will be indirect, minor, beneficial economic impacts in the short- and long-term for shark dealers and other entities that deal with shark products in this region as they will also have access to aggregated LCS products earlier than in past seasons. Thus, opening the aggregated LCS and hammerhead shark management groups in January and using inseason trip limit adjustments to ensure the fishery is open later in the year in 2019 will cause beneficial cumulative economic impacts, because it allows for a more equitable distribution of the quotas among constituents in this region, consistent with the 2006 Consolidated HMS FMP and its amendments.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has prepared a listserv summarizing fishery information and regulations for Atlantic shark fisheries for 2019. This listserv also serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

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